

DISPOSITION: July 19, 1950. Default decree of condemnation and destruction.

16384. Adulteration of canned corn. U. S. v. 72 Cases * * *. (F. D. C. No. 28959. Sample Nos. 51488-K, 72109-K.)

LIBEL FILED: April 13, 1950, Southern District of Indiana.

ALLEGED SHIPMENT: On or about January 26, 1950, by Lansing B. Warner, Inc., Onarga, Ill.

PRODUCT: 72 cases, each containing 24 1-pound, 4-ounce cans, of corn at Anderson, Ind.

LABEL, IN PART: "Royal Star Brand Cream Style Country Gentleman White Sweet Corn."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of worms and worm parts.

DISPOSITION: July 21, 1950. Default decree of forfeiture and destruction.

16385. Alleged adulteration of potatoes. U. S. v. 261 Bags, etc. Tried to the court. Complaint dismissed. (F. D. C. No. 24194. Sample Nos. 504-K, 642-K, 643-K.)

LIBEL FILED: On or about December 22, 1947, Northern District of Georgia.

ALLEGED SHIPMENT: On or about November 18, 19, and 25, 1947, by the Battleground Farms, from Freehold, N. J.

PRODUCT: 876 100-pound bags of potatoes at Atlanta, Ga.

LABEL, IN PART: (Bag) "Victory [or "Goldfinch"] Brand."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product was unfit for food by reason of its musty odor and taste, which made it unpalatable.

DISPOSITION: Ernest F. Tark, trading as Battleground Farms, having appeared as claimant, the case was tried on February 7, 1950, before the court. On March 13, 1950, the court dismissed the complaint, handing down the following opinion:

ANDREWS, *District Judge*:

ORDER DISMISSING COMPLAINT FILED AS A LIBEL IN REM

"On February 7, 1950, the case came on for trial before the Court without a jury. Oral and documentary evidence was introduced, at the conclusion of which the Court inquired concerning the present location and condition of the res.

"It appeared that 872 of the 876 bags of potatoes originally seized were destroyed pursuant to a stipulation of the parties to avoid further expense of storage; and that the remaining four bags of the lot are no longer in existence. The material portion of the stipulations and orders follows:

That the cost of storage of the above-described product is considerable and increasing monthly, and that it does not appear practical because of the nature of the product and the long and unseasonable storage to longer keep the entire quantity of said potatoes upon cold storage.

It is stipulated and agreed that the issues in the case will be preserved and the interests of the claimant and the Government better served by reduction at this time in the amount of the res.

That the bags of each brand of said potatoes be continued in cold storage as the res in the said case, and that the remainder of said potatoes be withdrawn from the storage by the United States Marshal and destroyed in accordance with proper order of this Court, without prejudice to either the Government or the claimant herein.

That the matter of cost will abide the determination of this case, and be taxed by the Court in accordance with law.

This the 30th day of September, 1948.

UNITED STATES OF AMERICA

By: J. Ellis Mundy
United States Attorney

Hewlett & Dennis, T. F. Bowden

By: Charles S. Barton
Counsel for Ernest F. Tark

That the United States Marshal withdraw from storage all of said potatoes except two bags of each brand thereof, and destroy the same without prejudice to either party hereto by delivering the same to the United States Penitentiary, at Atlanta, Georgia, to be consumed by livestock, and that the two bags of each brand of said potatoes be continued in storage until the final determination of this cause, and shall constitute the entire res of said cause.

It is ordered further that the said destruction of said potatoes shall not affect the issues involved, which shall be preserved until the final determination of the cause, nor shall affect the taxing of the cost in the proceeding, but that this destruction is by consent of both parties and in order to minimize the incident cost of storage.

BY THE COURT, this the 12th day of October, 1948.

Robert L. Russell

UNITED STATES DISTRICT JUDGE.

It is hereby stipulated and agreed by the parties hereto that the four bags of potatoes seized and stored in the Atlanta Company on or about January 7, 1948, in the above stated libel, and left in storage in accordance with the order of the Court dated October 12, 1948, are not in existence or identifiable, either as potatoes or as edible food or otherwise and it is further stipulated and agreed that this stipulation be made a part of the record of the case.

This 8th day of March, 1950.

W. G. McCullough

Assistant United States District
Attorney for the Government

Hewlett & Dennis, T. F. Bowden

By: Charles S. Barton
Attorneys for Claimant

Approved and ordered filed as a part of the record, March 8, 1950.

M. Neil Andrews

U. S. JUDGE.

"In this state of the record I find it unnecessary to adjudicate the case in its entirety because I think it is moot.

"There is no res. A part of it was destroyed in accordance with the stipulation of September 30, 1948; the remaining four bags which stood for the whole are no longer in existence. The cause should not proceed merely to fix liability for costs.

"See United States v. 3 Unlabeled 25-Pound Bags Dried Mushrooms, Seventh Circuit, 157 F. (2d) 722 and cases cited; Postal Telegraph-Cable Company v. City of Montgomery, 69 So. 428; Cullen v. Levee Improvement Dist. No. 3, 77 S. W. (2d) 310.

"The complaint is hereby dismissed.

"This 13th day of March 1950."

16386. Adulteration of potatoes. U. S. v. 356 Sacks * * *. (F. D. C. No. 29223. Sample No. 32370-K.)

LIBEL FILED: May 12, 1950, Northern District of California.

ALLEGED SHIPMENT: On or about April 25, 1950, by Ambro Rosaschi, from Wellington, Nev.

PRODUCT: 356 sacks, each containing 100 pounds, of potatoes at San Jose, Calif.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of parasitic worms.

DISPOSITION: June 15, 1950. Default decree of condemnation and destruction.

TOMATOES AND TOMATO PRODUCTS

16387. Adulteration of canned tomatoes. U. S. v. 299 Cases * * *. (F. D. C. No. 29233. Sample No. 72903-K.)

LIBEL FILED: May 18, 1950, Western District of Kentucky.